IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 354 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ATUL LIMITED

Versus

ECLAT CHEMICALS LIMITED

Appearance:

1. COMPANY PETITION No. 354 of 1999

NANAVATI ASSOCIATES for Petitioner No. 1

MR MIHIR H JOSHI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 22/02/2002

ORAL JUDGEMENT

This petition is filed under Section 433 and 434 of the Companies Act, 1956 (hereinafter referred to as `the Act') for winding up M/s Eclat Chemicals Ltd. (hereinafter referred to as `the respondent-Company').

2. The respondent-Company had placed various order for the supply of chemicals viz. Olieum, Sulphuric Acid, Caustic Soda, etc. As per the said order, the petitioner supplied and delivered the goods to the respondent-Company and for the said supplies, invoices during the period from 26.3.1996 to 29.3.1997 aggregating to a total sum of Rs.28,61,894/- were raised by the petitioner. As per the terms and conditions of the sale, the respondent Company was liable to pay the entire amount of the invoices within a period of 30 days from the date of invoice. In the event of any delay in making the payment, the respondent-Company was liable to pay interest at the rate of 20%, 23% and 28% per annum depending upon the total days of delay in payment. Inspite of several demands made by the petitioner and assurances given by the respondent-Company, the respondent-Company did not make any payment to the petitioner. Hence, the petitioner-Company through its advocate served the respondent-Company with statutory notice dated 28.8.1999 calling upon the respondent Company to pay the outstanding dues of Rs.50,72,511/(Annexure "E") with further interest at the rate of 28% p.a. from 15.8.1999 till the realization thereof within 21 days from the date of receipt of the statutory notice. In response to the said statutory notice, the respondent Company vide its letter dated 23.9.1999 gave reply pointing out that due to acute financial crunch, the respondent Company is not in a position to make payment and that the Company shall commence the payment only after the respondent-Company receives the sanction of the rehabilitation proposal from its bankers and restart its operations. Hence, the present petition for winding of the respondent-Company came to be filed.

3. The petition was admitted on 9.7.2001. However, the publication of advertisement was deferred till 30.7.2001. Thereafter, after hearing the learned counsel for the parties, this Court vide order dated 8.8.2001 directed to issue public advertisements in two daily newspapers (1) Indian Express and (2) Jansatta, both of Ahmedabad editions and the publication of notice in the official gazette was dispensed with. By the said order, the final hearing of the petition was fixed on 10.9.2001. Affidavit dated 1.10.2001 came to be filed by Mr Sharad Bhavsar, Managing Director of the petitioner Company stating the the petitioner Company has published the advertisements on 22.8.2001 in Indian Express, Ahmedabad Edition and Lok Satta-Jan Satta, Ahmedabad edition. Copies of the said newspapers are also produced on record.

4. At the hearing of the petition, the learned counsel for the respondent-Company states that he has no defence to the prayer for winding up the respondent-Company being granted.

5. Hence, respondent-Company M/s Eclat Chemicals Ltd. is ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Official Liquidator for winding up the respondent-Company in accordance with the provisions of the Act. The Official Liquidator shall exercise all the powers and discharge the duties under the Act. The Official Liquidator shall take over possession of all the assets, moveable and immoveable, books of account of the respondent-Company and make inventory thereof by 31.3.2002.

5. The petition is accordingly allowed and stands disposed of.

(M.S. Shah, J.)
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